



## INTERIOR BOARD OF INDIAN APPEALS

Jackson County, Kansas v. Acting Southern Plains Regional Director,  
Bureau of Indian Affairs

53 IBIA 179 (5/19/2011)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

JACKSON COUNTY, KANSAS,	)	Order Summarily Affirming Decision
Appellant,	)	
	)	
v.	)	
	)	Docket No. IBIA 09-081
ACTING SOUTHERN PLAINS	)	
REGIONAL DIRECTOR, BUREAU	)	
OF INDIAN AFFAIRS,	)	
Appellee.	)	May 19, 2011

For the reasons set forth in *Jackson County, Kansas v. Southern Plains Regional Director*, 47 IBIA 222 (2008) (*Jackson County I*), we summarily affirm the March 11, 2009, decision of the Acting Southern Plains Regional Director (Regional Director), Bureau of Indian Affairs (BIA), which Jackson County, Kansas (County), had appealed to the Board of Indian Appeals (Board). In his decision, the Regional Director approved the acquisition of a 90-acre parcel of land, known as the Nielsen PT-64 property, into trust for the benefit of the Prairie Band Potawatomi Nation (Nation).<sup>1</sup>

The County's two-page notice of appeal raises the same bare objections that it has raised in its previous appeals to the Board from the Regional Director's decisions to take land into trust for the Nation:

1. The Indian Reorganization Act (IRA), on which the Regional Director relied for authority to take the properties into trust, "violates the Tenth Amendment to the Constitution of the United States."
2. The Nation is not landless, has adequate land, and does not require additional land.
3. The taking of the properties into trust "denies [the] County jurisdiction over the land for zoning purposes."

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<sup>1</sup> The land approved for trust acquisition is described as the Fractional N $\frac{1}{2}$ NW $\frac{1}{4}$ , Section 30, and Lot 6 of the Fractional SW $\frac{1}{4}$ , Section 19, Township 7 North, Range 15 East, Sixth Principal Meridian, Jackson County, Kansas.

4. The decision will remove the subject land from the County's tax rolls, and will reduce taxes used "for the support of County roads, infrastructure and services for [County] citizens."

5. A prescribed comprehensive analysis to determine a balance of loss or gain either to the Nation or to the County is necessary because "the balance has tipped in favor of the [Nation] and against the County."

6. The Regional Director's decision to take the subject land into trust "undermines the legislative intent of [§ 5 of the IRA]."

Notice of Appeal at 1-2. No further arguments are provided by the County in its notice of appeal. The County did not file an opening brief, which was due on or before July 10, 2009.

These same arguments were raised by the County in *Jackson County I*, which was decided over 7 months prior to the Board's receipt of the present appeal, and in *Jackson County, Kansas v. Acting Southern Plains Regional Director*, 49 IBIA 214 (2009), which summarily affirmed another BIA trust acquisition decision on the basis of *Jackson County I* and which was decided before the County's opening brief was due in this appeal. Given the cursory nature of the County's objections, set forth above, there is no substantive difference evident between these objections and those that the Board carefully considered and rejected in *Jackson County I*, and the County has given us no reason to revisit that decision. In particular, the County has not met its burden of showing that the Regional Director abused his discretion in his consideration of whether to accept the subject land into trust. *See Jackson County I*, 47 IBIA at 228 ("Appellants bear the burden of establishing that BIA did not properly exercise its discretion. *See* 43 C.F.R. § 4.320(b)(1)."). Consequently and for the reasons set forth in *Jackson County I*, we summarily affirm the Regional Director's March 11, 2009, decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board summarily affirms the Regional Director's March 11, 2009, decision to accept the Nielsen PT-64 property into trust.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge